

### The effect of trade agendas on regulatory governance: when the EU meets the global south

Bianculli, Andrea C.

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WORKING PAPER

**KFG**  
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# THE EFFECT OF TRADE AGENDAS ON REGULATORY GOVERNANCE

When the EU Meets the Global South

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Andrea C. Bianculli

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Kolleg-Forschergruppe  
"The Transformative Power of Europe:  
The European Union and the Diffusion of Ideas"  
Innestr. 26  
14195 Berlin  
Germany  
Phone: +49 (0)30- 838 57033  
Fax: +49 (0)30- 838 57096  
[transform-europe@fu-berlin.de](mailto:transform-europe@fu-berlin.de)  
[www.transformeurope.eu](http://www.transformeurope.eu)



# THE EFFECT OF TRADE AGENDAS ON REGULATORY GOVERNANCE

## When the EU Meets the Global South

**Andrea C. Bianculli**

### Abstract

This paper focuses on the significance of regulatory governance at the regional level. In doing so, it analyzes to what extent and how North-South negotiations give rise to particular forms of regulatory governance in the developing world. To what extent do these forms vary across policy areas? Which elements account for the observed differences and similarities? Empirically, the paper explores the negotiation process between the European Union (EU) and the Southern Common Market (Mercosur), which aims to promote trade liberalization on the one hand, and the harmonization of regulatory frameworks on the other. The focus is on the trade and cooperative agendas involved in trade facilitation and education. Findings suggest that the negotiation of North-South agreements impacts on the ways in which different forms of regulatory governance are expressed, but this varies among particular policy issues. Both the type of norm promoted and the capacity building mechanisms envisaged create a particular ideational and material context, all of which in turn affects the actor constellation – type of actor, specific role and network configuration – hence leading to different regulatory governance regimes among policy areas, yet within the same trade negotiation.

### The Author



**Andrea C. Bianculli** is Research Fellow at the Institut Barcelona d'Estudis Internacionals (IBEI). She held a fellowship at the Kolleg-Forschergruppe "The Transformative Power of Europe", Freie Universität Berlin (2012-2013). Andrea received her Ph.D. in Political Science from the Universitat Pompeu Fabra in 2010 (Special Mention of the Juan Linz Prize 2010-2011 for the Best Doctoral Dissertation in Political Science granted by the Centro de Estudios Políticos y Constitucionales), and held post and pre-doctoral research positions at IBEI and the Facultad Latinoamericana de Ciencias Sociales (FLACSO-Argentina). Her research expertise focuses on global and regional governance, trade, regulation and development, with a special focus on Latin America, both from a comparative and international political economy perspective.

Contact: [abianculli@ibei.org](mailto:abianculli@ibei.org)

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## 1. Introduction<sup>1</sup>

During the last decades, the world has been going through a process of globalization and transnationalization. Far from implying the disappearance of international rules, this process has led to the widening and deepening of regulations governing global politics. The rise of regulation entails an increasing fragmentation of power between state and non-state actors and, at the same time, the creation of new networks and alliances (Djelic/Sahlin-Andersson 2006). An inherently uneven process, regulation takes place at different institutional levels (Duina 2006).

From a multilateral perspective, the completion of the World Trade Organization (WTO) increased the pressures for harmonizing regulatory frameworks within the domestic arena and had a major impact on the institutions of domestic governance (Dymond/Hart 2001; Ostry 1997). However, as the Doha Round faded, a large number of countries turned to bilateral and regional trade agreements, including North-South trade negotiations which pulled together developed and developing countries (Heydon/Woolcock 2010; Tussie/Saguier 2011).

These agreements entail new trading rules that increase free trade among countries, but at the same time, extend regulatory standards and disciplines to new areas (Dent 2006; Phillips 2007; Roffe/Santa Cruz 2006). Thus, apart from the more traditional issues relating to trade liberalization and market opening, in those areas where regulatory issues are relevant – namely, intellectual property rights (IPRs), investment, services and government procurement – North-South trade negotiations aim to harmonize rules to promote common regulatory frameworks.

Both the European Union (EU) and the United States, the world's major trading partners, have pursued North-South trade agreements, including bilateral as well as regional negotiations with Latin America. While the literature has analyzed the effects of these broader and deeper agendas in an extensive manner, the ways in which the negotiations make an impact on regional regulatory governance regimes remains a rather neglected issue. This study addresses the gap and makes an original contribution by proposing an exploratory framework to unravel how and to what extent the negotiation of North-South agreements promotes specific forms of regulatory governance at the regional tier in the South. Despite the resurgence of regionalisms and intraregional relations since the late 1980s, research concerning regulatory governance at the regional level in the developing world is still surprisingly limited. It is only recently that the literature on regulation has even acknowledged the particularities of the regulatory state in the South (Dubash/Morgan 2013; Minogue/Cariño 2006).

Empirically, the paper delves into the negotiation process between the EU and the Southern Common Market (Mercosur). The agreement focuses not simply on the expansion of trade, but also addresses the

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<sup>1</sup> This working paper results from research conducted at the Kolleg-Forschergruppe (KFG) "The Transformative Power of Europe," hosted at the Freie Universität Berlin (2012-2013) and which is funded by the German Research Foundation (DFG). I am grateful to Tanja A. Börzel and Thomas Risse for much thought-provoking feedback on earlier versions of this paper. Many thanks also to my colleagues and senior scholars at the KFG for their useful comments and suggestions during our Jour Fixe seminars. Finally yet importantly, I would like to thank the KFG team for their editorial support.

obstacles posed by national rules on economic flows by pushing towards the harmonization or creation of common regulatory frameworks in a diverse set of policy areas, thus promoting “deep integration” (Lawrence 1996). The study hence comparatively assesses this process across two policy sectors: trade facilitation and education. Do these agendas promote different forms of regulatory governance? Which elements account for the observed differences and similarities? My argument is that the agendas under negotiation vary in terms of the norms and the capacity building mechanisms promoted, which in turn can shape the prominence of distinct actors and networks, hence leading to particular forms of regulatory governance.

To develop the argument the paper first presents the theoretical arguments underlying this research: the key transformations in the governance of international trade as the agenda moves beyond negative integration to promote positive rule making. The third section introduces the exploratory framework, while the fourth explores the dynamics between the norms, capacity building mechanisms deployed, and the actor constellation across trade facilitation and education. After presenting a comparative assessment in section five, the article concludes by drawing out the implications for the characterization of the EU’s role in these emerging forms of regulatory governance in the Global South.

## **2. The New Trade Agenda: From the GATT to the WTO and Beyond**

### ***2.1 From Negative to Positive Integration at the Multilateral Level***

The nature of the international trade agenda has undergone important transformations during the last 25 years. The General Agreement on Tariffs and Trade (GATT, 1947) began as a negative integration project relying on a basic and common framework for reducing tariffs, and thus remained exclusively a negative integration process (Fligstein 2005; Scharpf 1996, 1999). Years later, the conclusion of the Uruguay Round, which led to the creation of the WTO, signaled the evolution of the multilateral trade agenda from negative integration to positive rule making (Dymond/Hart 2001). As a positive integration project, the multilateral trade agenda aims at “the reconstruction of a system of economic regulation at the level of the larger economic unit” (Scharpf 1999: 45), which will guide trade across national boundaries through rules specifying how exchanges will be governed (Fligstein 2005).

Even if demands for further liberalization have not been exhausted – as shown by negotiations in agriculture, textiles, automobiles and the banking and insurance sectors (De Bièvre 2006) – the completion of the WTO marked a turn towards the negotiation of international regulatory agreements in issues falling within domestic regulations and reaching deeply into domestic governance mechanisms (Dymond/Hart 2001).<sup>2</sup> Furthermore, under the WTO, countries negotiate and exchange access to their markets for regulation. This has created incentives to defend domestic regulations at the international level and industrialized countries have demanded that trade agreements be supplemented with regulation in diverse public policy domains, including IPRs, competition policy, investments and services (education and health). This affects the governance of trade.

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2 For a detailed analysis of the evolution of the trade regime after the creation of the WTO, see Ostry (1997).

Whereas negative integration policies relate to an approach based on liberalization and deregulation and only require governments to abstain from interfering with market forces, positive integration policies increasingly rely on regulations that require states to intervene and take certain measures (Scharpf 1999; Wallace 2005). Consequently, whereas it might be relatively easy for governments to produce negative measures, thus increasing market integration by eliminating national restraints on trade and distortions of competition, agreeing on positive integration rules, which shape the conditions under which markets operate, turns out to be a more complicated task. Agreement on positive rules of market integration remains extremely difficult and in many cases almost impossible because of relevant differences among countries in terms of normative or ideological positions, levels of economic development and institutional and policy patterns (Scharpf 1999). Additionally, strengthening the trade agenda falls within the universe of domestic regulations and reaches deeply into domestic governance, which affects the incentives for a diverse set of societal actors. In turn, this means that positive regulations require states to call for “consensus among a wide range of divergent national and group interests” (Scharpf 1999: 71).

## 2.2 *Positive Integration at the Interregional Level*

This “new deep trade agenda” (Young/Peterson 2006), “postmodern agenda” (Dymond/Hart 2001) or “regulatory trade agenda” (De Bièvre 2006; Woll/Artigas 2007) has a correlate in bilateral and interregional trade negotiations. The failure of the Cancun Ministerial Meeting in 2003 and the subsequent deadlock in the Doha Round led to a dramatic rise in the number of separate North-South trade agreements (Heydon/Woolcock 2010; Tussie/Saguier 2011).

Positive integration among states is difficult to achieve. The multilateral agenda and the working of the WTO add to the complexity. They bring together countries with important differences in terms of their levels of economic, political and institutional development, and which have hence different preferences regarding positive integration regulations. Still, most of the divisive issues of the multilateral trade agenda, which face opposition from developing countries, are now part of North-South trade negotiations. Thus, apart from the more traditional issues related to trade liberalization and market opening, North-South negotiations aim to harmonize domestic rules and regulations to promote common regulatory frameworks. Though a feature of both South-South and North-South regional trade negotiations, progress towards regulatory harmonization has turned out to be more intense in the case of the latter, especially in the bilateral trade agreements signed since the early 2000s (Roffe/Santa Cruz 2006). These initiatives have placed stronger emphasis on the imposition of market discipline than on trade liberalization itself (Dent 2006; Phillips 2007).

Whereas the rise of the new trade politics has not been unique to the EU, the European bloc has been the most vocal advocate of strengthening trade agendas. As it sought further regulatory agreements at the WTO (Baldwin 2006), its multilateral trade strategy linked market access with regulatory issues in the areas of competition policy, environmental standards, labor rights and investment rules (Deutsch 2001).<sup>3</sup>

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<sup>3</sup> This change in EU trade policy is explored in Young/Peterson (2006) and Young (2007).



However, as the Doha Development Round faded, the EU abandoned its demands for the negotiation of positive integration rules - namely, competition policy, government procurement, investment and trade facilitation – at the multilateral level, and turned to other negotiation scenarios, where its leverage was greater and opposition less pronounced. The Generalized System of Preferences (GSP), ‘plus’, and bi- and pluri-lateral agreements, including Association Agreements, appeared as relevant spaces for further promoting these regulatory agendas (EC 2004; Young/Peterson 2006).

With a focus on Latin America, the literature has analyzed the impact of these broader and deeper agendas in an extensive manner.<sup>4</sup> However, to my knowledge studies have not focused on the particular ways in which the negotiation of different agendas gives rise to particular forms of regulatory governance in the developing world. To what extent do these forms of regulatory governance vary across policy areas? Which elements account for the differences and/or similarities? Based on a “policy creates politics” (Lowi 1964) argument, this study explores the factors facilitating or constraining particular forms of regulatory governance in diverse policy areas at the regional tier of governance.

### 3. Interregional Trade Negotiations and Regulatory Governance Regimes

From a regional perspective, the expansion and diffusion of regulation across the EU has been studied extensively both in terms of how the regional organization affects domestic policies, institutions and political processes of member states and accession candidates (Börzel/Risse 2007; Bruszt/McDermott 2011; Featherstone/Radaelli 2003; Treib 2008). Though still scarce, analyses have recently acknowledged the emergence of new patterns of regulatory governance in the Global South, which certainly differ from the EU in terms of policy areas and regulatory mechanisms established. From an Asian perspective, but also with a focus on Latin America, studies have shown that though still rudimentary, especially when compared with the already institutionalized and supranational regulatory governance mechanisms in the EU, new types of regulatory governance are taking shape in the South (Jayasuriya 2008).

Building on this, the paper attempts to disentangle to what extent North-South trade negotiations contribute to these emerging forms of regulatory governance in the South. This is especially relevant in the case of Latin America, where regional integration has remained, until recently, “asymmetric” (Holman 2004): Countries have largely pursued integration through “negative regulation,” but this has not been matched by “positive regulation.” Furthermore, North-South negotiations involve rule makers and rule takers: because of the limited capacity of rule takers – namely, developing countries – they are expected to comply with the rules and standards set by the former (Bruszt/McDermott 2011; Streeck/Thelen 2005).

Given that North-South agendas place increasing emphasis on positive integration policies aimed at promoting coordination and harmonization in different regulatory areas, I argue that these negotiation processes give rise to particular forms of regulatory governance at the regional level. The paper aims to reconstruct “the strategic constellations as they are defined by the institutional setting within which interactions take

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4 For a review of this literature, see Bianculli (2010).

place” (Scharpf 1999: 70). The underlying assumption is that different trade agendas elicit particular policy dynamics underpinned by strategic constellations of state and non-state actors, whose nature, roles and network configurations will be determined by the institutional setting of the negotiation process, namely the specific norms and capacity building mechanisms devised.

### 3.1 *The Negotiation of Regulatory Commitments Across Agendas*

Whereas the precise definition of the relation between regulation and trade can sometimes be blurred (Woll/Artigas 2007), I understand regulation as mechanisms of social and economic control (Baldwin et al. 1998), and as encompassing formal and informal rules promoted by constellations of multiple (state and non-state) actors across different levels: national, regional and interregional. Regulation hence proceeds not only by means of legal sanctions and coercive powers but also through softer mechanisms. Indeed, the creation and embedding of social norms, shared standards and voluntary schemes by states, corporations and civil society actors may well be more effective. Moreover, regulation guides and controls activities and interactions within, beyond, and across national borders.

Regulation works differently in economic and social policy sectors as these stand for different representations of risk and hence entail diverse patterns of cooperation and conflict. Economic regulation deals with the functioning of market competition and includes various tools to establish, manage and supervise markets, while social regulation is concerned with non-economic issues and intends to address market failures and eliminate or reduce risks or exposure to risks (Levi-Faur 2011: 13; Meier 1985). Furthermore, and in terms of market integration, measures of negative policies may be classified as being market making, whereas positive regulatory policies may be either market making, as in the case of the elimination of non-tariff barriers to trade, or market correcting, as for example, process-oriented regulations of working conditions or pollution control (Scharpf 1999). Hence, when analyzing the relation between trade negotiations and regulation, the picture gains in complexity because of the move from at-the-border towards behind-the-border measures, on the one hand, and the simultaneous negotiation of regulatory commitments aimed at both regulating the creation of markets – economic regulation – and addressing market failures – social regulation – on the other.

Building on these two different dimensions – the place where trade barriers are situated and the primary focus of the regulatory commitments – Young (2007) develops a typology of policy issues addressed in multilateral trade negotiations as depicted in the following table.

Table 1. Typology of regulatory commitments in trade negotiations

At-the-border		Behind-the-border
<b>Competition</b>	<i>Traditional trade policy</i> <ul style="list-style-type: none"> <li>- Agriculture (export subsidies, levies)</li> <li>- Quantitative restrictions</li> <li>- Tariffs</li> </ul>	<i>Commercial policy</i> <ul style="list-style-type: none"> <li>- Agriculture (subsidies)</li> <li>- Competition policy</li> <li>- Government procurement</li> <li>- Intellectual property rights</li> <li>- Investment</li> <li>- Subsidies</li> <li>- Trade facilitation</li> <li>- Trade-related investment measures</li> </ul>
<b>Market failure</b>	(discriminatory import bans)	<i>Social trade policy</i> <ul style="list-style-type: none"> <li>- Agriculture (multifunctionality)</li> <li>- Environment</li> <li>- Labor standards</li> <li>- Services</li> <li>- Technical barriers to trade</li> </ul>

Source: Own construction, based on Young (2007).

Whereas traditional trade policy encompasses those commitments aimed at addressing at-the-border barriers in an attempt to regulate competition from foreign firms, commercial trade policy also addresses competition, though regulatory commitments reach within the domestic market as in the case of subsidies and of most of the Singapore issues: investment, competition policy, government procurement and trade facilitation. Finally, social trade policy stands at the intersection of behind-the-border measures and it focuses on market failures by addressing the negative externalities of pollution, for example, or by the attempt to export and promote regulatory standards in labor and environment. Even if it builds on Young's categorization, my own table departs in two important ways. First, trade facilitation is included under commercial trade policy, given its characterization as one of the Singapore issues. Trade facilitation has broadened in recent years "to include the environment in which trade transactions take place, including the transparency and professionalism of customs and regulatory environments, as well as harmonization of standards and conformance to international or regional regulations" (Wilson et al. 2005: 842). Thus, trade facilitation measures move inside or behind the border of domestic policies and governance structures. Second, services are included within the third category – social trade policy – on the basis that regulatory commitments in this area, especially in education and health, are sensitive issues directly affecting the role of the state in the provision of public services. These might hence find high resistance because of ideological and normative differences among states, but also due to their different level of economic development and institutional arrangements (Scharpf 1999).

### 3.2 *Regulatory Governance Regimes: The Institutional Setting and Strategic Constellations*

When analyzing the nuances of trade politics, studies have acknowledged variation across agendas according to the level of political salience and certainty over distributional effects (Poletti 2012), as well as the uncertainty of political outcomes and the technical requirements attached to the negotiation of South-South, North-South and WTO trade agendas, as having differential impacts on domestic trade governance (Bianculli 2010). Furthermore, different types of issues or regulatory commitments are expected to elicit particular political dynamics: given the relevant variance in terms of the distribution of anticipated costs and benefits, they have a different impact on the incentive structure, and hence mobilization patterns of different actors (Lowi 1964; Wilson 1980). The negotiation of regulatory commitments under the three different policy types depicted in Table 1 are also expected to trigger different policy dynamics (Young 2007).

Despite the particular focus of these various models, they have all highlighted the governance processes as varying dramatically because they depend on the particular constellations that evolve within particular policy domains or issues, showing the increasing complexities and nuances of trade politics today. By proposing an exploratory framework based on the institutional setting promoted by the negotiation of particular regulatory commitments, this study attempts to unravel the ways and extent to which the negotiation of regulatory commitments across agendas gives rise to particular forms of regulatory governance regimes at the regional level. The institutional setting is defined by the content of the agenda and the capacity building mechanisms deployed. Whereas the content of the agendas refers to the emphasis placed on particular policy issues and the nature of the ideas and norms promoted, capacity building mechanisms include the modes of assistance.

First, and in terms of the *norms* promoted, they can vary between regional and international norms, and between external-regional norms, as when the norms promoted by another regional bloc prevail over locally inspired norms, namely, domestic-regional ones.<sup>5</sup> Second, the *modes of assistance or capacity building measures* refer to the type and amount of resources provided; the particular actors targeted and the cooperative requirements.

*Resources* can be financial, informational or organizational.<sup>6</sup> While the specific type of assistance and the amount of resources deployed are relevant, the second dimension – the *type and number of actors addressed* by these different mechanisms – is, in fact, a more relevant factor when depicting the institutional setting. These mechanisms can range from those having an exclusive focus on state actors, privileging them over non-state actors, to more inclusive patterns addressing both state and non-state actors. The latter, however, does not exclude the fact that particular civil society actors might be privileged over others. Disentangling how the capacity building strategies work in terms of actors addressed is crucial, given that to the extent they address a variety of relevant state and non-state actors they provide incentives and a

5 I would like to thank Tanja Börzel for bringing this distinction among regional norms to my attention.

6 When analyzing the ways in which transnational integration regimes (TIRs) shape the development of regulatory institutions in emerging market democracies, Bruszt/McDermott (2011) look into the amount and type of resources the TIR offers them. These are mainly of three types: financial, informational and organizational.

variety of resources, all of which are expected to improve regulatory governance. Finally, the *cooperative requirements* refers to the extent to which these capacity building mechanisms require cooperation at the regional or international levels. The following table summarizes the independent variable, its different dimensions and expected variation.

*Table 2. Institutional setting: Two dimensions and their variations*

<b>Norms</b>	<ul style="list-style-type: none"> <li>• Regional vs. international</li> <li>• External-regional vs. domestic-regional</li> </ul>
<b>Capacity building mechanisms</b>	<ul style="list-style-type: none"> <li>• Type and amount of resources: <ul style="list-style-type: none"> <li>- Financial, informational, organizational</li> </ul> </li> <li>• Type and number of actors addressed: <ul style="list-style-type: none"> <li>- State and non-state actors (business, labor, civil society organizations (CSOs), academia and professionals)</li> </ul> </li> <li>• Cooperative requirements: <ul style="list-style-type: none"> <li>- Regional or international levels</li> </ul> </li> </ul>

Source: Own construction.

In turn, the various combinations observed across the independent variable, the dimensions and variations within each are expected to lead to different forms of regulatory governance. These forms are defined by the strategic constellations of actors involved – namely, state and non-state actors, including businesses, labor, CSOs, academia and professionals – and their role, together with their relations and network configurations.<sup>7</sup> The following table summarizes the expected variation in the dependent variable.

*Table 3: Strategic constellations*

		<b>Actors</b>	
		<i>Mono-stakeholder</i>	<i>Multi-stakeholders</i>
<b>Network configuration</b>	<i>Regional</i>	Dyadic Regional Constellation	Multiplex Regional Constellation
	<i>International</i>	Dyadic International Constellation	Multiplex International Constellation

Source: Own construction.

Hence, my main argument is that the different combinations of norms and capacity building mechanisms deployed within the negotiation agenda will result in particular strategic constellations. In turn, these are expected to lead to different forms of regulatory governance. Building on the literature on regimes (Krasner 1982; Ruggie 1982), I understand regulatory governance regimes as regulatory spaces encompassing the rules, norms and institutional procedures about which actors' expectations converge in a given policy area. The notion moves beyond states, and includes non-state actors and their networks.

<sup>7</sup> Jayasuriya (2008; 2009) argues that deepening our understanding of these emerging forms of regulatory governance implies looking into the nature of actors and their networks, together with their relations with other national and regional actors and organizations.

The study applies this exploratory framework to the empirical analysis of the negotiation process between the EU and Mercosur, to see whether and how inter-regional negotiations promote the emergence of particular regulatory governance regimes, and to what extent these vary across policy areas. The cross-policy comparative assessment is based on two different policy issues: trade facilitation and education. Both services liberalization in education and trade facilitation entail positive and negative integration policies. On the one hand, negotiating trade facilitation and the liberalization of educational services entails shallow or negative integration policies – namely, the removal of border barriers to trade or agreements on rules that should be prevented – to allow market creation. Still, these issues also entail deep or positive integration policies “that facilitate trade by reducing or eliminating regulatory and behind-the-border impediments to trade, where those impediments may or may not be intentional” (Evans et al. 2007: 3). These refer, in the case of trade facilitation for example, to the agreement on standards of procedure and monitor agency conduct (Chauffour/Maur 2010), the regulation of domestic services production that discriminate against foreigners, or the harmonization of accreditation processes to allow for the circulation of teachers and students, as in the case of education. In all, the negotiation of these agendas goes beyond the adoption of policies to open markets, and requires the harmonization and coordination of norms and standards, or mutual recognition of each other’s regulatory processes and standards. Consequently, they reach deep into domestic governance arrangements. Still, while education is conceived as a public good, and trade liberalization in this area challenges traditional regulatory and institutional governance frameworks guiding the provision of education, trade facilitation is catalogued as the more technical area. While they are “fundamental services for the effective implementation of a series of social rights” (Verger 2008: 19), trade liberalization in education may introduce limitations on state regulation, expand private sector education and even affect educational quality. Hence, my expectation is that the negotiation of regulatory commitments in these two different policy areas will lead to different regulatory governance regimes within the interregional negotiation process.

The narrative builds on the analysis of secondary literature and relevant written documents, including the Regional Strategy Papers (RSP) in which the European Commission (EC) identifies the objective and guidelines for EU policy towards Mercosur, with a focus on the 2000s. These regional strategies are complemented by the Regional Indicative Programmes (RIP) describing the specific sector measures, periods and planned financial engagement and expenses, which identify particular areas as “focal sectors,” namely, regional institutionalization, deepening of the Mercosur market and implementation of the future EU-Mercosur association agreement, and strengthening civil society participation, together with institutional websites and secondary literature.

#### **4. EU and Mercosur Interregional Negotiations: A Cross-Policy Analysis of Regulatory Governance Regimes**

Building on these insights, this paper analyzes the institutional conditions under which the negotiation process between the EU and Mercosur gives rise to particular forms of regulatory governance in the Southern bloc. The EU-Mercosur relationship is based on the Interregional Framework for Cooperation Agreement (EMFICA) signed in 1995 to promote an Interregional Association Agreement founded on three pillars:

trade liberalization, strengthened forms of political dialogue, and cooperation.<sup>8</sup> After long years of intense and legally driven relations across the Atlantic, trade negotiations were launched in 1999. Almost 15 years later and after nine negotiation rounds (the last one in October 2012), concluding a final agreement still seems elusive. In 2004, the situation had already reached a standstill, which lasted until the re-launch of negotiations at the EU-Latin America and the Caribbean (EU-LAC) Summit (Madrid, May 2010). However, the suspension of trade negotiations did not bring a loss of EU interest in the region. Relations continued through ministerial and informal technical meetings intended to deepen the agenda on political dialogue and cooperation (Botto/Bianculli 2011). Hence, even if trade negotiations followed a stop and go pattern, the EU relied on a fundamental instrument to facilitate and thus maintain the process: financial cooperation and technical assistance as depicted in the various RSP.

The interregional process envisages a comprehensive trade agreement, currently under negotiation, which covers not only trade in industrial and agricultural goods, but also services, improvement of rules on government procurement, IPRs, customs and trade facilitation, and technical barriers to trade. Clearly, this reflects the EU's "new trade and development agenda" and its growing emphasis on regulatory issues, capacity building and aid for trade (Faber/Orbie 2008). Within this context, the agreement with Chile (2002) was already portrayed in the early 2000s as the most comprehensive example of the EU's trade policy towards the South and as the bloc's "ideal framework" for its bilateral trade relations (Lamy 2002b).<sup>9</sup> The negotiation process with Mercosur was intended to follow similar steps: "the negotiations will cover the whole range of sectors, because Europe will come with its own interests, such as industry, services, public procurement, and intellectual property" (Lamy 2000: 7). Furthermore, the bilateral arena would explore "complementary negotiation methods to bring more ambitious results" (Mandelson 2005: 5).

Even if the negotiation has not led to the signing of a single and comprehensive agreement containing clear commitments, these long years of negotiations have provided an institutional setting in which interactions occur, promoting communication, socialization, and persuasion. Participation in trade negotiations thus promotes a learning-by-doing process (Bianculli 2010). This process opens a space where different state and non-state actors, operating at the national and (inter) regional levels, promote, negotiate and contest not only trade liberalization rules but also regulatory frameworks reaching into social and political domains. Furthermore, it provides financial, informational and organizational resources to specific state and non-state actors in an attempt to promote capacity building (Börzel et al. 2008). Portrayed as "an enabling instrument", capacity building can allow states and non-state actors to accept and adopt specific policy ideas and institutions. Thus understood, capacity building can complement other diffusion mechanisms (Börzel/Risse 2009: 7).<sup>10</sup>

8 The Framework was the next step from the 1992 Inter-Institutional Cooperation Agreement, the Joint Declaration of 22 December 1994, which already established the institutionalization of political dialogue and economic negotiations as the two pillars of the relationship, and the Declaration on Political Dialogue of 15 September 1995.

9 Pascal Lamy – EU Trade Commissioner (1999-2004) – portrayed this agreement as "the most ambitious and innovative results ever for a bilateral agreement by the EU" and as being "a 'fourth generation plus' agreement as it covers all the areas of our trade relation going well beyond our respective WTO commitments" (Lamy 2002b: 2).

10 The literature has identified four main mechanisms as driving diffusion processes: coercion, competition, learning and emulation, see Gilardi (2012); Marsh/Sharman (2009). More recently, Börzel and Risse (2012) have provided a more nuanced categorization of the mechanisms underlying the diffusion of ideas, policies and institutions



Building on these insights, the paper delineates how certain combinations of norms and capacity building mechanisms devised within trade negotiations promote or restrain specific strategic constellations shaping, in turn, the particular regulatory governance regimes at Mercosur level.

#### 4.1 *The Trade and Cooperative Agendas: Norms and Capacity Building Mechanisms*

##### 4.1.1 *Trade Facilitation*

The 2002-2006 RSP links cooperation to support for the negotiation process and highlights the creation of the Mercosur common market. In fact, and given the early stage of both Mercosur's customs union and common market, which suffered from relevant internal barriers, interregional cooperation was to deepen the institutionalization and enforcement of common rules and standards, while removing non-tariff barriers impeding trade among Mercosur partners, as in the case of customs duties. The elimination of non-trade barriers was fundamental to deepening the integration process and facilitating trade among member countries. In turn, the implementation of facilitation measures upholding interdependence between the two regions was a prerequisite for the conclusion of the negotiation process and the future sustainability of the association agreement.

Organized into three main areas, cooperation in trade facilitation was then incorporated under the priority "Institutionalization of Mercosur", whose final objective was "the possible creation of Mercosur regulatory bodies" (EC 2002a: 29-30). In terms of the capacity building mechanisms envisaged, these include both financial and informational assistance. In financial terms, 26 per cent of the total funding was devoted to institutional efforts at making Mercosur's institutions stronger, including those promoting trade facilitation.<sup>11</sup> To this end, the document anticipated the implementation of the trade facilitation measures depicted in the "Action Plan" agreed at the Madrid Summit in 2002. Capacity building also included informational mechanisms through European Technical Assistance, aimed at training officials in Mercosur institutions through workshops, courses, working groups and studies.

This trend has continued in the RSP for the period 2007-2013, which identifies three main challenges: support of regional integration, preparation of the implementation of the future trade chapter of the association agreement, and trade-related assistance. With a focus on trade policy and regulation, regional trade related assistance in the area of trade facilitation envisages informational and organizational mechanisms through capacity building and the improvement of trade and customs procedures. Interestingly,

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by differentiating between direct and indirect mechanisms. Focused on the diffusion process as initiated by the sender, direct mechanisms include coercion, manipulation of utility calculation, socialization and persuasion. Indirect mechanisms, on the contrary, look into the diffusion process from the recipient's perspective and involve competition, the drawing of lessons and normative emulation. Capacity building can then work as complementary to any of these mechanisms.

11 The other two areas of the cooperative strategy referred to the internal market and were intended to make the bloc's economic and trade structures more dynamic and integrated (44 per cent of total funding) and to support civil society (30 per cent of total funding).



this document now specifies the content and in particular the type of regulatory norms to be promoted: it highlights the acceptance of international standards, namely, the World Customs Organization (WCO) Framework of Standards to Secure and Facilitate Global Trade.<sup>12</sup>

The objectives of trade related-assistance mechanisms will be dealt with at the regional level and in accordance with Mercosur's own integration chart. According to previous EU experiences and shortcomings, cooperation will rely on a clear and strategic action plan based on Mercosur's own integration work program, rather than on a list of projects. Particular features and requirements of each individual country will be taken into account. Thus, the Country Strategy Paper (CSP) of Mercosur member states includes a regional dimension, too. They incorporate the specific list of actions each of the four countries will carry out, whereas the follow-up and monitoring remains at the responsibility of a Mercosur institution – though one not specified in the document.

The high level of financial assistance reflects the priority given to Mercosur's efforts for the completion of the common market, which receives 70 per cent of the € 50 million allocated to Mercosur. Moreover, part of the money allocated for the 2002-2006 period that had not been spent was re-directed towards further trade related technical assistance, especially on customs and sanitary and phytosanitary standards (EC 2007). Informational assistance is also relevant as both parties emphasize the importance of technical cooperation to promote trade facilitation, as in the case of the Mercosur-EU Customs Cooperation Project (PADUEM), whose second phase was from 2004 to 2007. Led by the private sector, PADUEM was to provide an adequate response to regulatory harmonization as required by the customs union. It included norms related to customs procedures, simplification and harmonization, information technology support, correct application of the common customs tariff, adoption of an agreement for mutual backing between Mercosur member states, modernization of human resources management, and customs training.<sup>13</sup> Emphasis was put on the use of European Technical Assistance, despite the "plenty of qualified local experts available" (Rom Support Team 2006: 14).

Trade facilitation was also included in the agenda of the EU-Mercosur Bi-regional Negotiations Committee (BNC) (Peña 2008), the main negotiating body between the EU and Mercosur, including Council members, members of the EC's General Directorates for Trade and Foreign Affairs, and the foreign ministers of Mercosur countries (Botto/Bianculli 2011). With the relaunch of trade negotiations in 2010, the issue of trade facilitation gained space in the agenda of the BNC. During the seventeenth meeting of the BNC (Buenos Aires, 2010), negotiators identified trade facilitation as one of the most important requirements achieved by 2004.

<sup>12</sup> WCO was created in 1947 when the thirteen European governments represented in the Committee for European Economic Co-operation agreed to set up a Study Group to examine the possibility of establishing one or more inter-European Customs Unions based on the principles of the GATT. One year later, the Study Group set up two committees: an Economic Committee, predecessor of the Organization for Economic Co-operation and Development (OECD), and a Customs Committee, which became the Customs Co-operation Council (CCC). In 1994, as the CCC became a global intergovernmental institution bringing together 177 customs administrations, its name changed to the World Customs Organization. For further details, see <http://www.wcoomd.org/en.aspx>, last accessed 27 March 2013.

<sup>13</sup> For further details, see <http://www.arcaconsortium.net/ESP/mer01.aspx>, last accessed 28 March 2013.

Despite the limited public information available regarding the records of these meetings, progress seems to have been made in the area of customs (trade facilitation) and related matters since parties clarified positions and exchanged proposals on customs and trade facilitation in October 2012 (BNC 2012). However, the more concrete institutional recommendations – especially, the establishment of an EU-Mercosur Joint Customs Cooperation Committee, already established in the Buenos Aires Statement on Business Facilitation – are still lagging behind.<sup>14</sup>

#### 4.1.2 Education

Education is also part of the free trade agenda between the EU and Mercosur, under trade liberalization in services, including commitments in the area of higher education<sup>15</sup> and a whole range of knowledge intensive services (ÖFSE et al. 2009). As such, educational matters are negotiated within the BNC. Still, liberalization of educational services has not been a relevant issue in the inter-regional negotiation process and has mainly advanced through the cooperative agenda (Botto/Peixoto Batista 2008). In fact, under the trade agenda, liberalization in the education sector has worked as a “bargaining chip” for the negotiation of other issues in which Mercosur countries have opposing interests, as in the case of agriculture. Interregional negotiations about this obliged Mercosur members to agree on a common position towards trade liberalization in services, including in education, leading in turn to the signing of the Protocol of Montevideo on Trade in Services in 1997. This should bring about a complete reduction of intra-regional discrimination by 2015.

EU cooperation with education in Mercosur as detailed in the 2002-2006 RSP focuses on the support of civil society through various strategies. Based on the important role assigned to civil society, namely, academics, social and economic partners, and non-governmental organizations (NGOs), financial, informational and organizational mechanisms are part of the whole capacity building strategy. Apart from the financial assistance mechanisms deployed through projects related to the provision of information about negotiations and their impact on both regions, cooperation in the field of education is set to contribute to legislative harmonization and the development of common policies in Mercosur, while also supporting educational programs in vulnerable sectors. Capacity building mechanisms also include informational resources through European technical assistance in those areas where EU proficiency is relevant: advice on policy and legislative measures, training, workshops, dialogue and exchanges of expertise amongst relevant agents in both regions, together with the development of specific Mercosur measures.

These objectives are still valid under the 2007-2013 RSP, which promotes both informational and organizational mechanisms through the strengthening and enhancing of civil society participation, knowledge of the regional integration process, mutual understanding and mutual visibility as the third priority. To this

<sup>14</sup> The document states that only six articles are currently without brackets, one of these being “the article on Special Committee on Customs, Trade Facilitation and Rules of Origin” (BNC 2012: 6).

<sup>15</sup> Education is one of the twelve service sectors covered under the WTO General Agreement on Trade in Services (GATS). Within education, trade liberalization is promoted in the following subsectors: primary education; secondary education; higher education; adult education; and other educational services.

end, cooperation focuses on the creation of EU-Mercosur study centers,<sup>16</sup> the organization of workshops and seminars to promote the interchange of expertise and assistance, together with support of the “Plan of the Mercosur Educational Sector 2006-2010.” Twenty per cent of the €50 million allocated for the period is directed toward this, while €10 million is allocated to two projects in the area of education and information that were not finalized under the previous RSP. Projects and programs financed under the CSP and various Latin American regional programs complement these resources. This cooperative strategy relies heavily on Mercosur’s new integration agenda, which includes, among other issues, the mutual recognition of diplomas. Only in 2011 did EU cooperation in education reach higher levels by contributing to two projects in this area.

First, the 2007 Annual Action Plan introduces the “Higher Education Mobility Support Program” (€3 million), which is based on the idea that intra-regional relations demand new steps in the integration process by elaborating regional policies in areas such as education, social cohesion and environment. The objective is to support the consolidation and expansion of Mercosur’s own mobility program for undergraduates. In turn, this should contribute to establishing Mercosur citizenship and a sense of regional belonging among university students in the four member countries. Second, the “Support Program for the Mercosur Educational Sector” (PASEM) (€6,8 million), which was part of previous EU cooperative strategies, had to be reformulated and refocused on improving teacher instruction after the European Parliament refused to endorse it because it did not contribute to reducing poverty and hence could not be classified as development assistance. Co-financed by the EU and Mercosur, PASEM builds on informational assistance: apart from promoting initial and continuous teacher training, it focuses on policy design and management to enhance educational quality in the region, thus contributing to social cohesion and integration. Teacher training institutes in the region are the direct beneficiaries, and implementation relies on the national education ministries in each country.

Although the specific norms to be promoted are not explicitly acknowledged in the corresponding documents, in the area of education, the EU cooperative agenda aims to generate common regulatory criteria for accreditation and the recognition of certificates. While this is expected to facilitate the mobility of students and highly-skilled workers between the two regions (Bugarín Olvera 2009), the strategy heavily relies, in more practical terms, on Mercosur’s own regional process of regulatory harmonization in the area of education.

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16 Building on the new Development Cooperation Instrument, the European Parliament called on the Commission to withdraw the initiative for creating these study centers, in particular the initiative to create European/Mercosur documentation centers, to establish EU and Mercosur Study Chairs, and to establish Masters’ degrees in EU and Mercosur Studies, as this would only widen the gap between rich and poor, EP (2007).

## 4.2 *The Strategic Constellations: The Actors, Their Roles and Their Networks*

### 4.2.1 *Trade Facilitation*

Through EU cooperation in trade facilitation, business actors supporting the agreement and relying on technical expertise in this area were granted direct access to the policymaking process. Thus, the Mercosur-EU Business Forum (MEBF) became involved in supporting trade facilitation. Created in November 1997, before the official launch of interregional trade negotiations and at the prompting of the German Federation of Industries, the MEBF was largely inspired by the experience of the Transatlantic Business Dialogue.<sup>17</sup> It aspired to offer an institutional framework for contributing to the consolidation of trade and inter-business relations. Even if trade facilitation was initially not on its agenda, a special group was established to deal with it. This was a rather “pragmatic” decision: “as interregional negotiations are not advancing, trade facilitation appears as an area where we can contribute positively to the interregional relation (...) and supposedly it benefits both parties.”<sup>18</sup>

Already in 2001, the MEBF presented a very complete and ambitious set of actions to assist Mercosur-EU business on the basis that trade facilitation measures should address both restrictions to intra-Mercosur and inter-regional trade flows. These focused on three main areas: customs and customs procedures; standards, technical regulations and conformity assessment procedures; and electronic commerce (MEBF 2001). The Buenos Aires Statement on Business Facilitation “pursued a stepwise approach and formulated altogether 30 recommendations for short-, medium- and long-term actions” (MEBF 2003: 12), which were to be implemented by governments though some of these “were supposed to be implemented by the business sector itself” (Peña 2008: 93). This document was the result of the close collaboration between the business and technical sectors, as in the case of Siemens and the Argentine Institute of Standardization and Certification (IRAM, Instituto Argentino de Normalización y Certificación).<sup>19</sup>

Most of MEBF’s recommendations found their way into the Business Facilitation Action Plan negotiated in 2002 and aimed at promoting Mercosur economic integration in the area of customs (EC 2002b; Lamy 2002a). Furthermore, trade facilitation was also part of the EU’s financial and technical assistance, and clearly aimed at backing up business objectives. As argued by the then Commissioner for External Relations, Chris Patten, EU cooperation policy instruments would encourage MEBF priorities (Patten 2002). Later on, the MEBF welcomed the cooperative initiatives decided in 2004, as these contributed to the integration of customs legislation within Mercosur, together with the training of personnel, improvement of computerized customs formalities, administrative co-operation and the fight against fraud.<sup>20</sup> In 2006, the MEBF Plenary reiterates the economic importance of trade facilitation and proposes a short list of priorities.

17 The Transatlantic Business Dialogue provides for enhanced cooperation between the governments and business communities of the EU and the United States. For further details on the MEBF and its role within the interregional negotiations, see <http://ec.europa.eu/enterprise/policies/international/listening-stakeholders/round-tables/#h2-6>, last accessed 12 July 2013. The MEBF had its own internet site until 2008, but this is no longer active.

18 Interview with MEBF executive, Buenos Aires, 21 November 2007

19 Interview with IRAM executive, Buenos Aires, 23 November 2007.

20 Interview with MEBF executive, Buenos Aires, 21 November 2007.

Apart from its access to the negotiation process and the design and implementation of EU cooperation in trade facilitation, the MEBF managed to develop strong liaisons with other regional and extra-regional institutions. It developed close relations with the academic sector through Sciences Po as it commissioned the Chaire Mercosur at this university, a research project on fundamental issues affecting negotiations between the EU and Mercosur.<sup>21</sup> Funded by the Inter-American Development Bank (IDB), as well as by companies and organizations in Argentina, Brazil and the EU, the project aimed at producing new ideas that would serve as the basis for developing common positions among the EU and Mercosur business communities and an action plan to deepen and strengthen inter-regional economic relations. In all, the objective was to elaborate a shared stance for influencing governmental agendas. One of the four issues under examination was “the crucial issue of Business and Trade Facilitation.”<sup>22</sup> The main conclusions and insights were then discussed in two workshops in Buenos Aires and São Paulo (September 2007), the results of which served as references for the debates of the MEBF’s VII Plenary Conference (Lisbon, October 2007). One of the conclusions reached was that “the business facilitation measures analyzed can be implemented outside the scope of the Association Agreement” (MEBF 2007: 4).

Whereas in terms of results, Lisbon failed to produce as substantive outputs as those derived from the Buenos Aires Declaration, for the first time the two main European bodies for Standardization were part of the meeting. These refer to the European Committee for Standardization (CEN) and the European Committee for Electrotechnical Standardization (CENELEC), which constitute the joint European Standards Institution, together with the European Telecommunications Standards Institute (ETSI). Thus, the MEBF attempted further negotiations within the private sector, even if from a state perspective negotiations were already held back. However, the underlying goal was no longer the harmonization of norms between the EU and Mercosur, but rather the exchange of information and expertise among regulatory bodies, while also allowing experts and technical staff to attend meetings.<sup>23</sup>

Despite existing discrepancies in the trade preferences of both blocs, Mercosur state actors perceived capacity building strategies in the areas of customs and trade facilitation as promoting more flow between national coordinators involved in projects, this being especially marked in the case of technical cadres (CCI-Mercosur 2012). Mercosur relies today on the joint management of voluntary regional normalization and standardization through the Mercosur Association of Normalization (AMN, Asociación Mercosur de Normalización), a private non-profit and non-governmental organization. Recognized by the Common Market Group (CMG),<sup>24</sup> AMN consists of the four national institutions of standardization and certification.<sup>25</sup> In 1999, the CMG signed a cooperative agreement with this association, which replaced the old Mercosur Committee of Normalization (CMN, Comité Mercosur de Normalización).<sup>26</sup> AMN is the only organization

21 Interview with IRAM executive, Buenos Aires, 23 November 2007.

22 See <http://www.iadb.org/en/projects/project-description-title,1303.html?id=RG-T1282>, last accessed 25 March 2013.

23 Interview with IRAM executive, Buenos Aires, 23 November 2007.

24 The CMG is the executive branch of Mercosur, made up of the Ministers of Foreign Affairs and of Economy, and Central Banks’ presidents, plus permanent coordinators from each member country.

25 For further details on AMN structure and objectives, see <http://www.amn.org.br/>, last accessed 29 March 2013.

26 In 1991, IRAM together with the normalization organizations in Brazil, Paraguay and Uruguay led the creation of

responsible for the development of technical norms within Mercosur. Though only voluntary, technical norms constitute an important instrument in international trade and particularly in regional integration. When developing Mercosur Norms (MN), the AMN gives priority to international norms over regional norms and those established within Mercosur member countries. In all, when drafting new regional regulations, AMN preferences are for international norms, namely those promoted by the International Organization for Standardization (ISO), the International Electro Technical Commission (IEC) and the International Telecommunication Union (ITU). From a regional perspective, norms elaborated by the Pan American Standards Commission (COPANT) also precede EU norms, as in the cases of CENELEC or CEN.

While demanding active and innovative participation from the private sector, the MEBF also stresses the importance of international standards supporting trade facilitation – namely, WCO – and highlights the continuation and enhancement of cooperation projects, including training programs and technical assistance plans, between the EU and Mercosur (MEBF 2001). Similarly, Mercosur negotiators emphasize “the importance of capacity building on customs cooperation” when dealing with the trade agenda (BNC 2012: 6).

Finally, during the inter-regional process, the EU’s position has focused on its minimal requirements, namely, the completion of Mercosur’s regional integration before discussing free trade (Maur 2005: 1569). When negotiating with developing countries, the EU tends to offer access to its own standards and procedures to simplify customs procedures while provisions related to trade facilitation are limited to customs cooperation. However, later agreements such as those with Chile and Mexico go even further and include the creation of a Special Committee on Customs Cooperation (Fasan 2004; Maur 2005). On the contrary, the EU-Mercosur process has promoted the elaboration of Mercosur norms based on international standards, and although it is part of the negotiation agreement, the implementation of such a committee is still pending.<sup>27</sup>

#### 4.2.2 *Education*

Interregional cooperation in the area of education is channeled through the Ministers of Education in Mercosur. Considered as a fundamental factor, all four-member countries signed an integration protocol as early as 1991 to create the Meeting of Mercosur Education Ministers (RME, Reunión de Ministros de Educación del Mercosur), which would propose to the Common Market Council (CMC) measures aimed at coordinating the educational policies of the member states.<sup>28</sup>

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the CMN. Paraguay is the only case where this institution has a governmental character.

27 This confirms the idea that the EU does not adopt the same policy approach for all regional groupings and individual countries (Farrell 2009).

28 In 1995, the RME was incorporated into Mercosur’s institutional structure, though the Ministers of Education were not granted veto power over the bloc’s formal decisions (Botto/Peixoto Batista 2008).

Set up as an intergovernmental body, the RME “holds the decisive say in all matters concerning education” (Gomes et al. 2012: 228). Its main objective is to promote training in human resources and to enhance the development and harmonization of educational systems, all of which are expected to improve students’ and professionals’ mobility and citizens’ awareness of the integration process (Verger/Hermo 2010). Thus, the agenda of the RME revolves around three main areas: basic, technological and higher education. Additionally, this specialized meeting established a regional space called the Educational Sector of Mercosur (SEM, Sector Educativo del Mercosur) to encourage cooperation between member countries and with other regional blocs, strengthen relations between the SEM and other decision-making bodies, and develop a regional identity through mutual understanding as well as a culture of integration. Nevertheless, cooperation in the area of higher education is not only about regional identity, but also about promoting regional and global competitiveness (Phillips 2001) and engaging in a knowledge-based economy (Fulquet 2005; Gomes et al. 2012). Within the SEM, the area of higher education has advanced most, especially in terms of three thematic blocs: mobility, accreditation and legibility of degrees, and institutional cooperation.<sup>29</sup>

The preferences of the RME lie in the promotion of cooperation among member countries to promote the harmonization of educational systems and build regional compatibilities (Gomes et al. 2012) as well as competitiveness. In fact, the Plan for Mercosur’s Educational Sector, established in 2006-2010, validated in 2011-2015, and which the EU is currently supporting through the RSP 2007-2013 clearly states that this sector

*“constitutes an instance of political coordination to integrate education to the necessary social, economic and political processes for the development of the people and national societies. It designs and executes policies to promote an education of quality for all, contributing thus to Mercosur’s objectives” (Mercosur 2005: 9).*

Interregional cooperation with the EU is intended to enhance this regional strategy. Interestingly, EU cooperation with Mercosur has lately become more focused on mobility through a project called “Higher Education Mobility Support Program.” Given the limited impact of the Mercosur Regional Academic Mobility of Accredited Careers (MARCA, Programa de Movilidad Académica Regional) and the limited financial resources,<sup>30</sup> EU’s cooperation in this particular policy field can be read as an attempt to base its strategies on Mercosur’s particular objectives and needs. EU cooperation can certainly provide financial, informational and organizational resources through its own intra-regional experience in the area of higher education – namely, the Erasmus Mundus and the Bologna Process.

Whereas cooperation is the objective guiding RME strategy, the trade liberalization agenda, which is led by the four Foreign Trade Ministries within the Mercosur technical committee on trade in services, relies on the idea that education is a commodity that can be provided by the market (Botto/Peixoto Batista 2008).

<sup>29</sup> Bolivia and Chile are fully-fledged members of the SEM.

<sup>30</sup> In 2004, the CMC established the Educative Sector Financing Fund to finance education policies and programs for regional integration (Mercosur 2004). Member states’ annual contribution is US\$ 30,000, plus US\$ 2200 per million inhabitants aged between five and 24 years old (Mercosur 2008).



Though based on a different understanding of education – public vs. market good – trade liberalization in this area also involves the harmonization of standards, certificates and accreditation.

From the perspective of the EU, cooperation with Mercosur is certainly part of its “more explicit ‘extra-regional’ globalizing strategy” in the area of higher education since the EC acknowledged the declining expansion of the services sector in Europe (Robertson 2010: 29). Starting in 2003 and with an increased impetus in 2008, higher education has been part of the EU’s drive to advance its economic position and influence in the world. To this end, several strategies were deployed, namely the Erasmus Mundus program, the GATS negotiations, together with EU external relations directed towards the European Neighbourhood Policy, industrialized nations (OECD/G8) and developing countries as well (EC 2006). Furthermore, the Bologna Follow up Group has elaborated a common strategy for developing the external dimension of the European Higher Education Area (Zgaga 2006). This strategy clearly prioritized identifying partner regions – rather than countries – and intensifying the exchange of ideas and experiences, as in the case of Mercosur. All of this was expected to create the conditions for international mobility, recognition, cooperation and attractiveness (Robertson 2010).

When looking into the role of non-state actors, their involvement has been more strongly focused on cooperation than on trade liberalization. In fact, civil society has remained rather detached from the negotiation of services liberalization, and education has not been an exception to this rule. Contrarily, non-state actors are promoting the cooperation agenda on education both at the Mercosur level and within negotiations with the EU.

At the interregional level, the EU cooperative agenda in education provides room for collaborative strategies among institutions, agreements between the ministries of education, and the creation and strengthening of networks, as in the case of the Ibero-American Summit of Rectors of Public Universities. The active role of civil society actors at the interregional level runs parallel to their involvement at the Mercosur level.

Even if the SEM does not envisage any institutional mechanism for the participation of civil society, this became apparent in 2006, when the First Mercosur Educational Forum (FEM, Foro Educativo del Mercosur) was organized, building on the initiative of CSOs under the “Mesa de Organizaciones Solidarias con la Educación.”<sup>31</sup> Social and trade union organizations, NGOs, and social movements working in the area of education have thus become increasingly involved in these forums that aim to promote dialogue between state and civil society in the identification and elaboration of regional challenges (Verger/Hermo 2010). In 2003, the Mercosur Educational Platform (PEM, Plataforma Educativa del Mercosur) brought together fourteen social and educational organizations in Argentina, Brazil, Bolivia, Chile, Paraguay and Uruguay to promote access, equity and educational standards. Another place for non-state actors is the Montevideo Group University Association (AUGM, Asociación de Universidades Grupo Montevideo). Created in 1991, this network brings together public and autonomous universities in Argentina, Bolivia, Brazil, Chile, Paraguay and Uruguay to promote regional integration through scientific, technological, cultural and educational cooperation among members.

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31 So far, four Mercosur Educational Forums have taken place. For further details, see Espósito (2010).



These emerging networks comprise a wide spectrum of actors, ranging from professors and universities to CSOs. Organizations range from the more focused Ação Educativa, Instituto Paulo Freire and Fundación SES in Brazil and Argentina, respectively, to Asociación Conciencia and Poder Ciudadano in Argentina and Associação Brasileira de Organizações não Governamentais (ABONG) in Brazil. The particular programs promoted by the EU – the teacher mobility program and the project to support mobility in higher education – have in turn contributed not only to the construction of a Mercosur citizenship through greater mobility, but also to closer and more heterogeneous networks.

In all, cooperation in education has activated a wide array of non-state actors, on the one hand, and established close links between state and non-state actors on the other. This turns out to be especially evident in the project “Higher Education Mobility Support Program,” which promoted relations between universities and students from the four member countries, leading to the establishment of various educational consortiums (CCI-Mercosur 2012).

Their close relationship relies on the convergence of their preferences. As in the case of the RME, the role of civil society actors is marked by their strong support of the notion of education as a public good to be provided by the state at all levels, including higher education. Their agendas hence focus on cooperation to promote “equity and educational quality within Mercosur.”<sup>32</sup> This is also the stance of regional academic institutions, namely the Latin American Council of Social Sciences (CLACSO) and the Observatorio Latinoamericano de Políticas Educativas (OLPED). Thus, their preferences are closer to public universities under the AUGM, which also build their strategy on cooperation as they attempt “building a common and extended common space.”<sup>33</sup> On the contrary, private universities deem education as a market good, and have thus a special interest in the trade agenda. However, their interests go well beyond the Mercosur market and embrace other South American countries as well (Botto/Peixoto Batista 2008).

## 5. Varying Patterns of Regional Governance

After looking into the norms promoted and the capacity building mechanisms envisaged within the trade and cooperative agendas in trade facilitation and education, and the strategic constellations within each policy, we now turn to comparative assessment, as summarized in Table 4.

32 This is the principle guiding the Plataforma Educativa del Mercosur. For further details, see <http://www.gloobal.net/iepala/gloobal/fichas/ficha.php?id=30595&entidad=Agentes&html=1>, last accessed 30 September 2013.

33 Available at <http://www.grupomontevideo.edu.uy/index.php/institucional/iQuienes-somos>, last accessed 30 September 2013.

Table 4. Trade facilitation and education: A comparative assessment

		Trade facilitation	Education
Norms	Regional/International	Preeminence of international standards: International standards (WCO)	Preeminence of regional standards
	External-regional/ Domestic-regional	Preeminence of international standards over external-regional ones	Preeminence of domestic-regional norms: RME, Mercosur Educativo, Higher Education
Capacity building mechanisms	Type and amount of resources	Financial, informational and organizational mechanisms, though higher amount of financial resources	Financial, informational and organizational resources
	Type and number of actors addressed	Mainly addressed to non-state actors: business and normalization organizations	Addressed to state and multiple non-state actors: universities, teachers, students, educational and widely-focused CSOs
	Cooperative requirements	(Inter) Regional cooperation	Regional cooperation

Source: Own construction.

Trade facilitation and education are part of the cooperative and trade agendas negotiated at the interregional level. However, when looking across the negotiation process, they show different combinations of norms and capacity building mechanisms. The institutional frameworks thus devised have led to particular strategic constellations, giving rise in turn to different regulatory governance regimes.

Regarding trade facilitation, both the 2002-2006 and 2007-2013 RIP introduce this issue as a fundamental pillar in the process towards an association agreement. However, later on, as the issue is not mentioned in the Mid-Term Review for 2011-2013, trade facilitation remains almost exclusively on the agenda of the main negotiation body, the BNC. Despite the limited public information available through the records of BNC meetings in terms of the implementation of the Madrid Action Plan, which builds on the Buenos Aires Statement on Business Facilitation and later agreements, the issue seems to have lost its cooperative dimension, except for a project on environmental norms (ECONORMAS-Mercosur). It is now restricted to the main pillar of the interregional agreement: trade liberalization. On the contrary, though included in both the trade and cooperative agendas, the initiatives in the area of education show different objectives and barely interact. Furthermore, at the interregional level, progress in education was more marked within cooperation with Mercosur, as shown by the more precise terms of the different EU strategies.

In respect of the content of the agendas, namely the nature of the rules and norms promoted (which can be regional or international), a difference emerges. Both the cooperative and trade agendas were led by a general agreement on the establishment of an international norm for promoting trade among Mercosur countries and between those and the EU. Whereas the first RSP refers to the need to promote Mercosur regulatory institutions, later emphasis is placed on the implementation of international standards and rules like those under the WCO. This seems to be reflecting the preferences of Mercosur actors, including

business and normalization institutions under the AMN. Whereas the promotion of international norms is one of the objectives of the Buenos Aires Action Plan, the AMN establishes that when elaborating MN, international rules should be prioritized over domestic-regional ones, as in the case of the Ibero-American norm COPANT, and extra-regional ones such as those coming from European institutions, namely CENELEC and CEN.

Within the field of education, the main norm promoted has been domestic-regional. EU's cooperative strategies in education, aimed at promoting the exchange of expertise, technical knowledge and good practice between the blocs, are based on Mercosur's embryonic regional space. As a whole, Mercosur has developed intense coordination in the area of education since 1991. Starting with the integration protocol signed by the Ministers of Education of the four member countries in 1991, education has been increasingly framed as a regional regulatory regime. It is thus one of the longest-standing attempts at framing policies at the regional level and one of the prime efforts at promoting common regional norms and standards in non-economic issues.

Despite significant differences in terms of the financial resources available for trade facilitation and education, the capacity building mechanisms envisaged to promote both issues also employ informational and organizational tools. However, the number and types of actors addressed by these are the main difference. Whereas in the case of trade facilitation, the mechanisms are directed at business actors and to a lesser extent, to normalization institutes, in the case of education, they have allowed for the participation of state and non-state actors. Those involved include state actors – namely, the four ministries of education – together with a wider set of non-state actors ranging from universities to CSOs working on education issues and those dealing with broader topics. Hence, when assessing the actors, the narrative shows that the institutional setting of the agendas for trade facilitation and education has led to the involvement of different actors, whose roles and networks vary, too.

Within the institutional setting provided by the negotiation of trade facilitation – within both the BNC and the cooperative agenda – business actors seem to be playing a more central role. The negotiation of regulatory commitments in this area entails discussing norms and standards. All of this demands close cooperation between state actors and non-state ones with the required expertise, which state actors in developing countries usually lack (Bianculli 2010). Government actors increasingly rely on non-state actors, as shown by the creation of AMN. While technical non-state bodies have gained more influence in the formation of Mercosur's regulatory regime, there is still no comprehensive record of measures undertaken by the private sector under the MEBF. Certainly, this actor had a sound impact on interregional negotiation through several initiatives concerning trade facilitation. However, MEBF's influence on recent developments remains obscure. In all, the institutional setting of trade facilitation has established a *dyadic regional constellation*, marked by close ties between state and business actors based on the interchange of technical information and expertise. Even if in a lax manner, the interregional negotiation process has promoted closer cooperation with other institutions on both sides of the Atlantic.

As business actors attempted to elaborate a common stance based on sound technical information, the MEBF has forced business actors to agree in order to strengthen their position when negotiating with

public officials and trade negotiators.<sup>34</sup> Furthermore, business actors managed to create a network through their liaison with Sciences Po, the IDB and European standardization institutions. Given the difficulties in achieving consensus at the governmental level, where the trade facilitation agenda lies, the private sector attempts to promote private agreements. The final objective is no longer to advance regulatory harmonization but rather to promote informational exchange about norms and standards the different parties support. This accounts for the interchanges with regulatory institutions in the EU and other international financial institutions, as in the case of the IDB.

In the case of education, the institutional setting provided by the negotiation between the EU and Mercosur has promoted a *multi-regional constellation*, bringing together state actors in the RME with universities, social and political organizations, specialized NGOs, and various stakeholders at domestic and regional levels. Being closely related to the provision of public services, education is based on complex ideas, especially when compared with traditional trade policy or even commercial policy (Young 2007: 796). The implications of trade liberalization and regulatory commitments in this area are expected to spur a wider range of state and non-state actors. Still, our analysis shows that the institutional setting provided by the agenda for education has addressed larger and more heterogeneous constituencies. Combined with the promotion of Mercosur's own domestic-regional norms, it has allowed networks to include a wider array of state and non-state actors, including non-trade ministries, in all four-member countries. Furthermore, in terms of the cooperative requirements, capacity building mechanisms in the area of education have extended Mercosur's regional networks across the domestic and regional levels. As for the establishment of dialogue and interchange mechanisms with potential partner institutions and organizations in the EU, Mercosur actors seem to have chosen other places for closer interregional relations. These places include the programs the EU has directed towards Latin America, of which Mercosur member countries are among the chief beneficiaries, namely, Alban, AI-Invest, Urb-AI Alure and ALFA.

## 6. Some Final Remarks

This article has looked into the negotiation agenda of two different sectors – trade facilitation and education – within the wider interregional relationship of the EU and Mercosur. The findings reveal how and to what extent the institutional setting provided by negotiations about regulatory commitments in these areas has built a particular context for a regulatory governance regime.

With trade facilitation, the emerging form of regulatory governance is based on international rules and standards in order to help establish Mercosur's own norms for enabling trade among its constituent countries, and with the EU. The capacity building mechanisms have mainly concerned the business sector under the MEBF. The technical requirements for negotiation have obliged this actor to form closer ties with other associations at the domestic, regional and interregional levels, and with academics and development

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<sup>34</sup> Despite existing differences, MEBF has managed to speak with one voice on behalf of European and Mercosur business interests. Only once has the business group failed to produce a complete joint document and this was with respect to agriculture (Bianculli 2010).

banks. Whereas interregional negotiations have clearly involved the participation of different levels of public officials and negotiators, when it comes to non-state actors, the process has established a single channel to allow communication with the private sector at domestic, regional and interregional levels. In sum, the trade facilitation agenda has provided an institutional setting for a *dyadic international regulatory regime*, marked by the promotion of international standards and the closer links with business actors.

The regulatory governance regime triggered by the interregional process in education is characterized by the promotion of regional standards and norms, these being mainly domestic-regional norms set by the RME and SEM in the early 1990s. The main involved actors are the four ministries of education at regional – through the RME – and domestic levels, together with a wide array of non-state actors. The latter include universities, teachers and students as direct beneficiaries, together with diverse CSOs. The interregional negotiation process has thus been based on the Mercosur regional frame. Combined with the provision of capacity building mechanisms addressing a more heterogeneous set of non-state actors, this has resulted in a *multiplex regional regulatory regime*.

These findings provide three main insights. First, they reveal the changing patterns of regulatory governance as integration advances through the harmonizing of standards and norms in areas beyond trade in the Global South. Second, the study has shown the increasing presence and relevance of networks mobilizing particular constellations of multiple state and non-state actors, simultaneously operating at different levels – domestic, regional and interregional – and their considerable variation across economic and social realms. Finally, the paper highlights the significance of capacity building mechanisms as incentives for regional actors to implement, adopt and even strengthen regional regulatory changes. Furthermore, negotiations between the EU and Mercosur reveal that these may become even more relevant when trade liberalization either comes to a halt or shows little progress because of conflicting interests. Still, it is clear that the ways in which North-South trade negotiations can promote particular regulatory governance regimes do not take place in a vacuum. In this, the EU's influence depends on the extent to which its capacity building mechanisms are consistent with regional processes.

Several elements have hindered the EU's promotion of stronger regulatory governance in the area of trade facilitation, namely governmental discrepancies and competition about norms, showing that the EU is not the only game in town. On the contrary, the EU-Mercosur process has accompanied an existing process of regulatory governance through the RME and the SEM. Thus, the EU has strengthened this embryonic regulatory governance regime in education. With funding, and through the interchange of expertise, experience and technical knowledge, the EU has provided Southern governments with valuable resources. In all, we can expect this cooperation to have an impact on the regulatory capabilities of Southern states and the consolidation of the regional arena as a new regulatory space.

The paper also illustrates a broader point: the need to deepen our understanding of the ways in which regulatory governance advances in the Global South. Whereas the focus has been on trade negotiations between industrialized and developing countries, future research should look into the impact of the increasing integration among countries and regional blocs in the developing world. This is a question of importance not only for Latin America, but also for the remainder of the Global South.

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